

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GARY & DIANE MILLER,

) No. CV-05-5113-AAM

) **ORDER OF DISMISSAL**

) Plaintiff,

) vs.

) BANKRUPTCY JUDGE PATRICIA
) WILLIAMS, et al.,

) Defendants.

Plaintiffs have commenced this action by filing a “Petition To Vacate Void Judgment With Collateral Attack Against Defendants.” The cited ground for the petition is Fed. R. Civ. P. 60(b)(4) which authorizes a court to relieve a party from a final judgment, order, or proceeding because “the judgment is void.”

Plaintiffs assert the November 14, 2005 order of United States Bankruptcy Judge Patricia C. Williams dismissing plaintiffs’ Chapter 13 case (Ct. Rec. 43 in 05-7798PCW 13) is “void” and should be vacated. Plaintiffs assert they are also entitled to damages resulting from entry of the order, although this court is not aware of any authority that damages can be awarded pursuant to Rule 60. More important, however, is the fact that plaintiffs have appealed the order entered by Judge Williams. On November 22, 2005, plaintiff appealed the order to the Ninth Circuit Bankruptcy Appellate Panel (BAP). (Ct. Rec. 45 in 05-7798PCW 13). The appeal was transmitted to the BAP on the same date. (Ct. Rec. 46 in 05-7798PCW 13). The plaintiffs have a right to appeal

1 and they have exercised that right. That is the proper method for seeking review of the order entered
2 by Judge Williams. Accordingly, whether that order was improper or “void” is a determination for
3 the BAP, not for this court.

4 Plaintiff’s petition is **DISMISSED with prejudice** on the basis of Fed. R. Civ. P.
5 12(b)(1)(lack of subject matter jurisdiction) and Fed. R. Civ. P. 12(b)(6)(failure to state a claim upon
6 which relief can be granted).

7 **IT IS SO ORDERED.** The District Executive shall enter judgment accordingly and forward
8 a copy of the judgment and this order to plaintiffs and to any other persons or counsel of record, and
9 **CLOSE** the file.

10 **DATED** this 22nd of December, 2005.

11
12 s/ Alan A. McDonald
13 ALAN A. McDONALD
14 Senior United States District Judge
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